

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

ELIZABETH ANN SANCHEZ

Applicant for Registered Nurse License

Respondent.

Case No. 2012-661

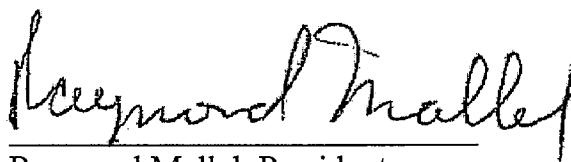
OAH No. 2012060998

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on January 14, 2013.

IT IS SO ORDERED this 14th day of December, 2012.

A handwritten signature in black ink, appearing to read "Raymond Malle", written over a horizontal line.

Raymond Malle, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

ELIZABETH ANN SANCHEZ

Respondent.

Case No. 2012-661

OAH No. 2012060998

**PROPOSED DECISION**

Administrative Law Judge Perry O. Johnson, Office of Administrative Hearings, State of California, heard this matter on September 11, 2012, in Oakland, California.

Supervising Deputy Attorney General Diann Sokoloff represented complainant Louise R. Bailey, M.Ed., R.N., Executive Officer, Board of Registered Nursing, State of California.

Attorney Marc Ter Beek, 1648 International Boulevard, Suite 115, Oakland, California 94601, represented respondent Elizabeth Ann Sanchez, who was present at the hearing.

On September 11, 2012, the parties submitted the matter and the record closed.

**FACTUAL FINDINGS**

1. On April 26, 2012, complainant Louise R. Bailey, M.Ed., R.N., (complainant) in her official capacity as Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California, (the board) made, and caused to be filed, the statement of issues against respondent Elizabeth Ann Sanchez (respondent).

*History of Application for Licensure and Denial of Respondent's Applications*

2. On February 18, 2011, respondent signed an application for licensure by examination to become a registered nurse. On February 22, 2011, in response to an inquiry from complainant's designee, respondent sent a letter explaining the circumstances pertaining to her history of a criminal conviction and arrests for criminal

offenses for which no conviction records exist. And on May 4, 2011, respondent sent another letter to complainant regarding her efforts towards rehabilitation following her conviction and arrests.

By letter, dated May 26, 2011, acting for the board, complainant's designee denied respondent's application for licensure by examination under seven statutory sections<sup>1</sup> in the Business and Professions Code.

The application remains pending as the board has refused to issue a license to respondent due to her past acts and omissions that appear to disqualify her for licensure.

### *Use of Dangerous Drugs*

3. On April 24, 2002, police officers with the Morgan Hill Police Department and the Santa Clara County Unified Narcotic Enforcement Team conducted a parole search of the residence where the boyfriend of respondent lived. Respondent was present at the residence on the occasion of the 6:30 a.m. police search. During the search, law enforcement determined that respondent and her boyfriend were under the influence of a controlled substance. While in custody, the police detected that respondent had an outstanding warrant due to her earlier arrest in 2001 for an earlier drug offense. Respondent and her boyfriend were arrested on April 24, 2002.

After the police officers issued respondent a citation for violation of Health and Safety Code section 11550, subdivision (a), she was released on bail from a Morgan Hill Police Department facility.

4. At the hearing of this matter, respondent made an admission that approximately 10 years ago she associated with persons involved in drug use and that she had used controlled substances. Respondent acknowledged her recreational use of methamphetamine as a drug of choice between 2000 and approximately 2003.

### *Respondent's History of a Criminal Conviction*

5. On June 12, 2003, in the California Superior Court in and for the County of Santa Clara, under case number CC272019, respondent was convicted, on her plea of nolo contendere, of violating Penal Code section 470, subdivision (d) (forgery), a misdemeanor.

---

<sup>1</sup> In its letter, dated May 26, 2011, the board expressed the grounds for denial of the application for licensure as flowing from Business and Professions Code sections 480, subdivision (a)(1); 480, subdivision (a)(2); 480, subdivision (a)(3); 2761, subdivision (a); 2761, subdivision (f); 2762, subdivision (b); and 2762, subdivision (c).

6. The crime of check forgery is substantially related to the qualifications, functions and duties of a registered nurse.

7. The facts and circumstances giving rise to the conviction in June 2003 involved respondent's participation in the acts of another woman, Elizabeth Pena, to pass or offer as true and genuine a forged and worthless check. At the hearing of this matter, respondent asserted that she provided transportation for the other woman and she was on the business premises of the site where the worthless check was presented. Respondent's acts led to her arrest on November 22, 2002, when she was present at a convenience store when a forged check was attempted to be cashed.

8. As a consequence of the June 2003 conviction, the superior court sentenced respondent to spend 15 days in jail; but, the court granted respondent credit for time served. Also the court ordered respondent to pay \$100 to the State Restitution Fund.

#### *Unprofessional Conduct*

9. Respondent's conduct, which resulted in her arrest and conviction for check forgery, constitutes unprofessional conduct.

#### *Committed Acts Which If Done by a Licentiate Would Result in Discipline*

10. Respondent's conduct and acts, which involved (i) use of dangerous drugs, (ii) a conviction for forgery of a check, (iii) an arrest for attempting to pass and offer a forged check and (iv) her jail sentence, reflect that respondent committed acts that if done by a board licentiate would result in disciplinary action against such licensee. Moreover, respondent's past acts reflect dishonesty, unprofessional conduct and a conviction of a substantially related offense.

#### *Matter in Aggravation*

11. In her letter, dated February 22, 2011, to complainant's designee, respondent made an admission that in 2001 she was arrested for drug use. Although she was placed into a court-granted drug diversion program in 2001, she failed "to cease any and all use of illegal drugs." And she did not complete a drug diversion program that had been extended to her by the superior court. Respondent's failure to honor her obligations to the drug diversion program resulted in a warrant being issued for her arrest, which occurred on April 24, 2002.

#### *Matters that Militate Against Rehabilitation*

12. Regarding the underpinning facts that led to her criminal conviction, at the hearing of this matter respondent proclaimed that she was not criminally culpable for the

act of forgery. Her account of the circumstances of the acts that led to her conviction suggests that she was innocently pulled into the unlawful conduct of a female acquaintance. But respondent's account is not believable. And more important, respondent's version of the matter, which underscores the basis of the criminal conviction, operates as an impermissible collateral attack upon the superior court's determination that she was guilty of violating Penal Code section 470, subdivision (d).

13. Respondent offered no competent, corroborating documentary evidence that she has had significant and conscientious involvement in community, religious or privately sponsored programs designed to provide social benefits or to ameliorate social problems.

#### *Respondent's Background and Matters in Mitigation*

14. Respondent is currently 36 years of age because she has a date of birth on May 17, 1976.

15. Respondent has two children, who are now 17 years of age (a son) and eight years of age (a daughter).

#### *Matters in Rehabilitation*

16. Following her April 2002 arrest for being under the influence of a controlled substance, respondent appeared in a superior court proceeding for a "Probation and Sentencing" hearing on July 24, 2002. The proceeding resulted in respondent being readmitted to a "Prop 36" diversion program, which would be monitored by the superior court with the initial court review on October 2, 2002, regarding respondent's progress in the related drug counseling and rehabilitation program.

Also, the July 24, 2002, hearing entailed the court issuing an order that the imposition of sentence be suspended for a two-year period that respondent would be placed on formal probation. The terms and conditions of probation included an order that respondent: i) report to a probation officer; ii) submit to searches and drug testing; iii) not be present where alcohol or drugs were sold; iv) complete a treatment plan as administered by a particular drug counseling company; and, v) pay fines and fees in an amount of approximately \$250.

17. Respondent faithfully adhered to the terms of probation due to the July 2002 superior court sentencing proceeding. And the probation period ended in approximately July 2005.

CALIFORNIA  
BOARD OF REGISTERED NURSING

OCT 09 2012

18. On December 29, 2006, the Superior Court for Santa Clara County issued an Order under Penal Code section 1203.4 that expunged, set aside and cleared the record of respondent's conviction in June 2003 for forgery of a check.

19. Respondent's arrest for being under the influence of a controlled substance occurred in April 2002, which was 10 years before the date on the Statement of Issues.

Respondent's conviction in June 2003 for attempting to present a forged check occurred eight years, ten months before the date of the Statement of Issues.

20. Since November 2002 when she was arrested for attempting to pass a forged check, respondent has had no records of arrests or criminal convictions.

21. Even though the court-ordered respondent's participation in Narcotics Anonymous (NA) counseling ended in approximately 2004, respondent continued to attend NA meetings for about one year after her obligation ended to engage in the behavior-modification program of NA. Respondent poignantly conveyed at the hearing that the additional year's involvement in NA meetings and counseling strengthened her resolve to avoid use of controlled substances or illegal drugs.

22. Respondent expresses great remorse for her past experience with drug use. Now she is adamantly opposed to recreational or casual use of controlled drugs or street drugs.

23. As of the date of the hearing in this matter, respondent has been sober and she has lived a drug free life for approximately nine years.

In 2004 respondent completed NA counseling during which she attended three meetings each week from 2002 until 2004.

24. Since 2002, respondent has faithfully set out to adopt a new life style than the course that led to her arrest for drug use. And she has selected new friends and associates who are sober and mature individuals.

25. When respondent attended nursing school she submitted to drug testing. All of the tests that she underwent returned negative for drugs in her system.

26. Although respondent grew up in Morgan Hill, she now maintains her residence in Gilroy. Her household consists of her 17-year-old son, her eight-year-old daughter and her male companion, who has spoken of marriage to respondent. Respondent's son attends high school, and her daughter is in the third grade. Respondent has resided in Gilroy for approximately one year.

27. In approximately 2004, respondent acquired licensure as a Certified Nurse Assistant (CNA). In 2006, respondent gained licensure as a Licensed Vocational Nurse (LVN).

28. Currently, respondent is gainfully employed as a LVN.

Each week for approximately 16 hours to 24 hours, respondent works for Care Meridian, a sub-acute, long-term facility located in Gilroy, California. Many of the patients at that facility required constant ventilator breathing assistance. Care Meridian patients have experienced catastrophic injuries or diseases, including head trauma injuries, grave heart attacks, and other maladies that result in long-term permanent disability. Respondent works the 7 a.m. to 3 p.m. shift at Care Meridian. And she has worked at Care Meridian since approximately October or November 2011.

Also for approximately 24 hours each week respondent works for Caring Hands as a nurse assistant. She works from 10 a.m. to 10 p.m. on Sundays and Mondays. She has worked at Caring Hand since October 2011.

29. Respondent volunteers at her daughter's third-grade classroom. During the preceding school year, respondent spent several hours twice each week with her daughter's classroom. She hopes to devote, at least, one day each week for that volunteer activity.

30. Respondent has the respect and admiration of many people in her community. She offered at the hearing four character letters<sup>2</sup> to supplement and explain her testimony.

31. In the Spring of 2011, respondent graduated from the Gavilan College Nursing Program for preparation to take the board's examination to acquire licensure as a registered nurse.

#### *Witnesses in Rehabilitation*

32. Two individuals appeared at the hearing of this matter to give evidence regarding respondent's character for sobriety, her uncompromising commitment to drug-free living, her integrity, her trustworthiness, her sound work ethic, her great potential to be an excellent nurse, and her devotion to her family and community.

---

<sup>2</sup> A letter, dated March 1, 2001, by Ronald Ajluni, D.C., Family Health Group; a letter, dated March 1, 2011, by Linda M. Stubblefield, RN, BSN, Nursing Facility, Allied Health Programs of Gavilan College and Debbie Amaro, RN, MSN, with the letter on the stationery of Gavilan College; a letter, dated June 20, 2011, by Susan Turner, RN, MSN, FNP, Lead Instructor – RN Program of Gavilan College; and, a letter, dated May 6, 2011, by Nadia Ajluni, DC, of Family Health Group

a. Susan Turner (Ms. Turner) is employed by the Gavilan College as the Lead Faculty member at the college's Department of Nursing.

Ms. Turner first met respondent "a little over one year ago," when respondent was a student in a class taught by Ms. Turner. And respondent was a student in two classes led by Ms. Turner. In May 2011, respondent completed the last class, which was taught by Ms. Turner.

Respondent did very well in the clinical phase of the class taught by Ms. Turner. And she exhibited stellar performance in her work. Respondent earned one of the highest grades in the class, that is a "B" because there was no "A" grade given to any student by Ms. Turner.

As to respondent's character, Ms. Turner was impressed with the generosity shown by respondent in providing notes and mentoring to disabled students in the college's nursing program.

But, on cross-examination, Ms. Turner acknowledged that she had no personal knowledge that respondent sustained a conviction for check forgery.

b. Ms. Colby Perez, a registered nurse, has known respondent since late 2011, when respondent began to work at Care Meriden. Ms. Perez is respondent's supervisor at the sub-acute facility.

Ms. Perez is familiar that before respondent was hired to work as a certified nurse assistant at Care Meriden a background check was performed as to respondent. Through the background check, Ms. Perez found nothing that would have precluded the facility in hiring respondent.

In May 2012, Ms. Perez prepared a performance evaluation for applicant. Ms. Perez expressed that she gave applicant high marks in the evaluation.

During her tenure with Care Meriden, respondent has been promoted from a CNA to a licensed vocational nurse due to her superb nursing work.

Respondent is known by Ms. Perez to be an ethical, honest individual. Respondent has shown herself to have been a reliable, dedicated, "sharp" and honest nursing professional who is a positive member of the nurse team at Care Meriden. In the view of Ms. Perez, respondent is "a star." Ms. Perez believes respondent will make an "excellent RN."

On cross-examination, Ms. Perez, however, acknowledged that she was not aware that respondent had a conviction for check forgery.



### *Dispositive Finding*

33. The weight of evidence establishes that although respondent has attained a level of rehabilitation from her past history of drug abuse and her criminal conviction for check forgery, it would not be against the public interest for her to hold a restricted license during a period of probation as a registered nursing following her passing the board's licensing examination.

## LEGAL CONCLUSIONS

### *Standard of Proof and Burden of Proof*

1. The party asserting the affirmative in an administrative hearing has both the burden of proof of going forward as well as the burden of persuasion by a preponderance of the evidence. (Gov. Code, § 11504; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.)

The burden of proof is on respondent Elizabeth Ann Sanchez, by a preponderance of the evidence, to establish that the Application for Licensure by Examination should be granted because she is qualified to take the board's examination and that complainant has no cause to deny the application.

### *Causes for Discipline*

#### FIRST CAUSE FOR DISCIPLINE – USE OF DANGEROUS DRUGS

2. ~~Business and Professions Code~~ section 2762, subdivision (b), states that it is unprofessional conduct for a licensee or an applicant for licensure to “use any controlled substance . . . or any dangerous drug or dangerous device . . . to an extent or in a manner dangerous or injurious to . . . herself, any other person, or the public . . .”

Cause to deny respondent's application for licensure as a registered nurse exists under Business and Professions Code section 2762, subdivision (b), by reason of the matters set forth in Factual Finding 3 and 4.

#### SECOND CAUSE FOR DISCIPLINE – CRIMINAL CONVICTION

3. Business and Professions Code section 2736, subdivision (a)(3), sets forth, that, “an applicant for licensure as a registered nurse shall . . . [n]ot be subject to denial of licensure under Section 480.”

Business and Professions Code section 480, subdivision (a)(1), prescribes that the board may deny an application for a license on the ground that the licensee “has

CALIFORNIA  
BOARD OF REGISTERED NURSING

been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. . . .”

Business and Professions Code section 480, subdivision (a)(2), sets out that the board may deny an application for a license on the ground that the licensee has “done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.”

Business and Professions Code section 480, subdivision (a)(3), establishes that the board may deny an application for a license on the ground that the licensee has “done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.”

Business and Professions Code section 2761, subdivision (f), provides that the board may take deny an application for licensure for “unprofessional conduct, which includes . . . conviction of . . . any offense substantially related to the qualifications, functions, and duties of a registered nurse . . . .”

Cause to deny respondent’s application for licensure as a registered nurse exists under Business and Professions Code section 2736 as it interacts with Code section 480, subdivision (a)(1), (a)(2) and (a)(3), by reason of the matters set forth in Factual Finding 5 and 6.

#### THIRD CAUSE FOR DISCIPLINE – FORGERY

4. Business and Professions Code section 2761, subdivision (a), provides that the board may deny an application for licensure for “unprofessional conduct, which includes . . . conviction of . . . any offense substantially related to the qualifications, functions, and duties of a registered nurse . . . .” Any act of forgery constitutes unprofessional conduct that is substantially related to being a registered nurse.

Cause to deny respondent’s application for licensure as a registered nurse exists under Business and Professions Code section 2761, subdivision (a), as it interacts with Code section 480, subdivision (a)(2), by reason of the matters set forth in Factual Finding 5 through 8.

#### FOURTH CAUSE FOR DISCIPLINE –ACTS THAT IF DONE BY A LICENTIATE

5. Business and Professions Code section 2736, subdivision (a)(3), sets forth, that, “an applicant for licensure as a registered nurse shall . . . [n]ot be subject to denial of licensure under Section 480.”

Cause to deny Respondent’s application for licensure as a registered nurse exists under Business and Professions Code section 2736 as it interacts with section 480,

subdivision (a)(3), by reason of the matters set forth in Factual Findings 3 through 10. Respondent's conduct involved acts that if done by a registered nurse licensee would result in the great likelihood of revocation or suspension of licensure.

### *Other Legal Conclusions*

6. The matters in aggravation, the matters that militate against rehabilitation, the matters in mitigation, the matter in rehabilitation, and the witnesses in rehabilitation as set forth in Findings 11 through 32 have been considered in making the following order.

7. Respondent was not credible at the hearing of this matter when she asserted she was not fully culpable for the commission of the offense of check forgery for which she was convicted. Even though on the date of the conviction she plead no contest to allegations in a criminal complaint, respondent made representations at the administrative proceeding in this matter whereby she sought to diminish her culpability for the events that resulted in the check forgery conviction. Her representations exist as a collateral attack against the facts upon which the superior court determined respondent to be guilty because of her plea.

"A final judgment of conviction is a fact; and, its effect cannot be nullified . . . either by [an] order of probation or by [a] later order dismissing the action after judgment." (*In re Phillips* (1941) 17 Cal.2d 55.) It has long been established that it is improper for a license applicant to come before a licensing agency after a criminal conviction to attempt to impeach a plea of guilty or a no contest plea and a resulting conviction. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449-452.)

In an administrative proceeding, a respondent cannot challenge the validity of a prior conviction. (*Thomas v. Dept. of Motor Vehicles* (1970) 3 Cal.3d 335, 337-339; *Matanky v. Board of Medical Examiners* (1979) 79 Cal.App.3d 293, 303-306.) A plea of nolo contendere (no contest) admits all matters essential to the conviction. (*People v. Arwood* (1985) 165 Cal.App.3d 167, 171-172.) In this matter, respondent impermissibly embarked on a collateral attack of the facts the resulted in her conviction for check forgery. Respondent's version of the events relating to her criminal act of check forgery was not only wholly unbelievable, but also her utterances, under oath, showed that she has not attained full rehabilitation from her past unlawful conduct.

6. Notwithstanding the immediately foregoing Conclusion 5, respondent established by the weight of evidence that she has been sufficiently rehabilitated from her past drug abuse and probable addiction to the controlled substance known as methamphetamine. And she has attained rehabilitation with regard to the conduct that led to her arrest and conviction for check forgery.

Respondent expressed sincere remorse for the misconduct in using the subject illegal substance that posed a danger to herself and the public that she used from 2001 until approximately 2003

Moreover, respondent's devotion to her family and her sobriety establish her rehabilitation from the past potential unprofessional conduct.

7. Respondent has met the burden of proof that requires that she establish that she possesses the qualities of character, sobriety, and integrity necessary for her to be licensed as a registered nurse following her success with the board's examination for licensure. However, her failure to accept unqualified responsibility for the acts that led to her criminal conviction casts doubt on her full rehabilitation. And respondent's use of an illegal drug, namely methamphetamine, is a matter of grave concern to the board; even though respondent produced substantial evidence that she has been drug-free for a decade. Hence, a period of probation with a probationary license is warranted in the matter of respondent Elizabeth Ann Sanchez.

8. Complainant argues that terms and conditions of probation of a prospective probationary licensed status include requirements that respondent: (1) undergo a medical examination and a psychiatric evaluation that might "rule out" the need for the imposition of the "drug-related" terms under the board's Guidelines for Disciplinary Action, or (2) be obligated to be subject to drug testing, at her own expense, and the other "drug-related" terms and condition during the entire course of the probationary license. Complainant's proposed terms and conditions of probation regarding the "rule out" aspect for respondent are unduly punitive. Respondent established that she has been clean and sober for approximately 10 years. During her education for both her LVN program and at Gavilan College Nursing program, respondent underwent annual drug testing, which showed her to be negative for drug use. Also, Ms. Turner, the Gavilan College lead instructor for the nurse program, and Ms. Perez, respondent's supervisor at Care Meridian treatment facility, respectively testified regarding their experiences in detecting nurses impaired by drug use. And each witness noted that respondent has shown absolutely no signs of use of drugs. By the weigh of the evidence, respondent is adverse to recreational drug use. Moreover, respondent, who has only recently graduated from nursing school and is the mother of two children, would be unfairly burdened by depleting her financial resources to pay the expense of undergoing a medical examination and a psychiatric evaluation.

## ORDER

The application of respondent Elizabeth Sanchez for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of three (3) years on the following terms and conditions:

## SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

### (1) OBEY ALL LAWS

Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

### (2) CRIMINAL COURT ORDERS

If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

### (3) COMPLY WITH THE BOARD'S PROBATION PROGRAM –

Respondent shall fully comply with the conditions of the Probation Program established by the board and cooperate with representatives of the board in its monitoring and investigation of the respondent's compliance with the board's Probation Program. Respondent shall inform the board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

### (4) REPORT IN PERSON –

Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the board or its designated representatives.

CALIFORNIA  
BOARD OF REGISTERED NURSING

OCI 000000

#### (5) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE

Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. The respondent must provide written notice to the board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the board if she applies for or obtains a new nursing license during the term of probation.

#### (6) SUBMIT WRITTEN REPORTS.

Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

#### (7) FUNCTION AS A REGISTERED NURSE

Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

#### (8) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS

Respondent shall obtain prior approval from the board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the board all performance evaluations and other employment related reports as a registered nurse upon request of the board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

#### (9) SUPERVISION

Respondent shall obtain prior approval from the board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

CALIF.  
BOARD OF REGISTERED NURSING

OCI 00

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

#### (10) EMPLOYMENT LIMITATIONS

Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the respondent is working or intends to work in excess of 40 hours per week, the board may request documentation to determine whether there should be restrictions on the hours of work.



### (11) VIOLATION OF PROBATION

If a respondent violates the conditions of her probation, the board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the board.

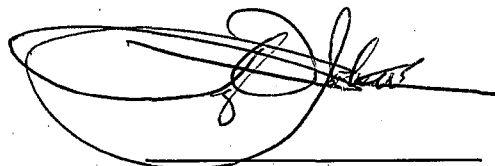
### (12) LICENSE SURRENDER

During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the board. A registered nurse whose license has been surrendered may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- 2) One year for a license surrendered for a mental or physical illness.

DATED: October 9, 2012



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

CALIFORNIA  
BOARD OF REGISTERED NURSING

# Exhibit A

Statement of Issues Case No. 2012-661

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 State Bar No. 161082  
1515 Clay Street, 20th Floor  
4 P.O. Box 70550  
Oakland, CA 94612-0550  
5 Telephone: (510) 622-2212  
Facsimile: (510) 622-2270  
6 *Attorneys for Complainant*

7 **BEFORE THE**  
8 **BOARD OF REGISTERED NURSING**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
Against:

12 **ELIZABETH ANN SANCHEZ**

13  
14  
15 Respondent.

Case No. 2012-661

16 **STATEMENT OF ISSUES**

17 Complainant alleges:

18 PARTIES

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,  
Department of Consumer Affairs.

21 2. On or about March 24, 2011, the Board of Registered Nursing, Department of  
22 Consumer Affairs received an application for a Registered Nurse License from Elizabeth Ann  
23 Sanchez (Respondent). On or about February 18, 2011, Elizabeth Ann Sanchez certified under  
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
25 application. The Board denied the application on May 26, 2011.

26 ///

27 ///

28 ///

## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that code.

## STATUTORY/REGULATORY PROVISIONS

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

...

"(b) Use any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license."

7. California Code of Regulations, title 16, 1444 states, in pertinent part, that a conviction or act shall be considered to be substantially related to the qualifications, functions or

1 duties of a registered nurse if to a substantial degree it evidences the present of potential unfitness  
2 of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

3 8. Section 480 of the Code states:

4 "(a) A board may deny a license regulated by this code on the grounds that the applicant has  
5 one of the following:

6 "(1) Been convicted of a crime. A conviction within the meaning of this section means a  
7 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a  
8 board is permitted to take following the establishment of a conviction may be taken when the  
9 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when  
10 an order granting probation is made suspending the imposition of sentence, irrespective of a  
11 subsequent order under the provisions of Section 1203.4 of the Penal Code.

12 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
13 benefit himself or herself or another, or substantially injure another.

14 "(3) Done any act that if done by a licentiate of the business or profession in question,  
15 would be grounds for suspension or revocation of license."

16  
17 FIRST CAUSE FOR DENIAL OF APPLICATION  
(Unprofessional Conduct—Use of Dangerous Drugs)

18 9. Respondent's application is subject to denial under Code sections 480, subdivision  
19 (A)(3) and section 2762, subdivision (b), on the grounds of unprofessional conduct, in that on or  
20 about April 24, 2002, she was arrested for being under the influence of a controlled substance.

21 a. On or about April 24, 2002, Respondent was arrested for being under the  
22 influence of a controlled substance. After she was arrested, police officers learned that  
23 Respondent had been arrested in 2001 for violating Health and Safety Code section 11550(a) and  
24 a warrant had been issued against her relating to that arrest.

25 SECOND CAUSE FOR DENIAL OF APPLICATION  
26 (Conviction – November 25, 2002)

27 10. Respondent's application is subject to denial under sections 2736; 480, subdivisions  
28 (a)(1), (2), and (3); and 2761, subdivision (f), in that on or about June 12, 2003, in a criminal

1 proceeding entitled *People of the State of California v. Elizabeth Anni Sanchez*, in the Superior  
2 Court of the State of California, County of Santa Clara, Case Number CC272019, Respondent  
3 was convicted by a plea of nolo contendere of violating Penal Code section 470(d) (forgery of a  
4 check). The circumstances are as follows:

5 a. On or about November 25, 2002, Respondent was arrested for attempting to  
6 pass and offer as true and genuine a forged check.

7 b. On or about June 12, 2003, Respondent was sentenced to serve 15 days in  
8 county jail and pay court fees in the amount of \$100.00.

9  
10 THIRD CAUSE FOR DENIAL OF APPLICATION  
(Unprofessional Conduct – Forgery)

11 11. Respondent's application is subject to denial under Code section 2761, subdivision  
12 (a), on the grounds of unprofessional conduct in conjunction with section 480, subdivision (a)(2),  
13 in that Respondent was convicted of a crime involving check forgery as set forth in paragraph 9,  
14 subparagraph (a), above.

15 FOURTH CAUSE FOR DENIAL OF APPLICATION  
16 (Committed Acts Which if Done by a Licentiate)

17 12. Respondent's application is subject to denial under section 2736 and 480, subdivision  
18 (a)(3), in that Respondent committed acts which if done by a licentiate of the profession would  
19 constitute grounds for discipline as set forth in paragraphs 9(a), 10(a), 10(b), and 11(b), above.  
20 This conduct constitutes grounds for discipline under Code section 480, subdivision (a)  
21 (conviction, dishonesty, and doing acts that are grounds for discipline), 2761, subdivision (a)  
22 (unprofessional conduct), section 2761, subdivision (f) (conviction of a substantially related  
23 offense), and section 2762, subdivision (b).

24 OTHER MATTERS

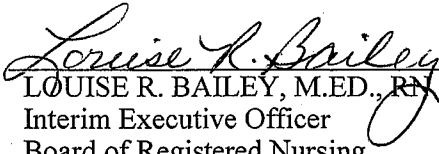
25 13. Respondent admits in a letter to the Board that she was arrested for drug use in 2001  
26 and did not complete the drug diversion program as stipulated by the Court. This failure to  
27 adhere to the drug diversion program led to a warrant being issued for her arrest.  
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Elizabeth Ann Sanchez for a Vocational Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: April 26, 2012

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

SF2011202653  
statement of issues.rtf